IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.129 OF 2002

United India Insurance Co. Dhulia
(Dhule Branch Office at Dhule
through it's Divisional Manager
& authorised representative and
signatory Aurangabad Division,
Aurangabad for Branch Manager,
Branch Office, Dhule

.. APPELLANT
(Orig. Opp. No.3)

VERSUS

1. Tina D/o. Parashram Valvi
Age:19 years, Occ: Labourer,
C/o. Parashram Kalu Valvi
R/o. Deulpada, Post-Bortha,
Tq. Nizar, Dist. Surat (Gujarath)

2. Vasant Tumdya Valvi
Age:27 years, Occ: Driver
of Matador
R/o. Dhanore, Tq. Nandurbar,
Dist. Nandurbar,

3. Sanju Pandit Koli,
Age:55 years, Occ:Business,
R/o. Dhanora, Tq. & Dist.
Nandurbar.

..RESPONDENTS
(No.1 Orig.App.Res.
No.2 & 3 Ori. Opp.
No.1&2 respectively)

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Shri A.B. Gatne, Advocate for appellant;

Shri S.S. Patil, Advocate for Respondent No.1

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CORAM : P.R.BORA, J.

DATE : 14th June,2017.

ORAL JUDGMENT:

1) Heard. The present appeal is filed by the insurance company taking exception to the Judgment and Award passed by the Motor Accident Claims Tribunal, at Dhule (for short, the Tribunal) in MACP No.667/1998.

2) Respondent No.1 in the present appeal (hereinafter referred to as 'claimant') had filed the aforesaid claim petition, claiming compensation on account of injuries sustained by her in a vehicular accident happened on 18th December, 1996, having involvement of a truck bearing registration No. MH-18-B-7652, owned by Respondent No.2 and insured with the appellant – insurance company. It was the contention of the original claimant that, at the relevant time, she was employed by owner of the truck as a coolie on the said truck, which was involved in carrying sand. The said truck on 18th December, 1996 met

with an accident and the claimant received the injuries in the said accident, which resulted in incurring 35% permanent disability by her. The claimant had, therefore, claimed compensation amounting to Rs.2,00,000/-. The claim petition so filed by the claimant, was resisted by the insurance company on various grounds. It was the contention of the insurance company that, at the relevant time, the passengers were being carried in goods truck and the breach of policy condition was writ-large. It was the further contention of the insurance company that the claimant had not suffered any such injury in the alleged accident which would have resulted in incurring 35% permanent disablement to the claimant. The insurance company has, therefore, prayed for dismissal of the claim petition.

3) The learned Tribunal, after having assessed the evidence brought before it, allowed the claim petition in part and granted the compensation of Rs.1,50,000/- to Respondent No.1,

payable jointly and severally by the owner and insurer of the truck. Aggrieved by, the insurance company has filed the present appeal.

4) Shri Gatne, learned Counsel appearing for the appellant – insurance company, has assailed the impugned judgment on various grounds. The learned Counsel mainly objected the conclusion recorded by the Tribunal that the insured, since had paid an extra premium of Rs.75/-, unlimited risk was covered by the said insurance policy. The learned Counsel, taking me through the terms and conditions of the insurance policy, submitted that the Tribunal has misconstrued the fact of extra premium paid of Rs.75/- by the owner. The learned Counsel explained that the term "TPPD", means Third Party Property Damage. The learned Counsel submitted that the extra premium of Rs.75/- was thus paid by the owner of the insured truck to cover the unlimited risk towards the damages to the property of the third party and it does not cover

the risk of the passengers unauthorizedly carried in the goods truck.

5. The learned Counsel thereafter invited my attention to First Information Report (FIR) and spot panchanama, which were relied upon by the claimant in order to prove her claim. The learned Counsel submitted that the FIR in many words indicates that, at the relevant time, more than 20 persons were being carried in the said truck and all of them were passengers being carried in the said truck. The learned Counsel further submitted that though it was the case of the claimant that sand was being carried and she was being employed in the said truck for loading and unloading the sand, the spot panchanama does not reveal that the sand was being carried in the said truck. The learned Counsel submitted that from the evidence on record, it is, therefore, evident that a total false claim was made by the claimant and it therefor could not have been allowed by the Tribunal.

6. The learned Counsel further submitted that the original claimant had also failed in bringing on record any cogent and sufficient medical evidence so as to reach to the conclusion that she has incurred 35% permanent disability. The learned Counsel submitted that the claimant, admittedly, did not examine the doctor, who has issued the medical certificate and even then relying on the said certificate the Tribunal has held that the claimant has incurred the permanent disability, as shown in the Disability certificate. The learned counsel therefore submitted for setting aside the award.

7. The learned counsel further submitted that a mere statement of the claimant that she was employed with Respondent No.2, i.e. owner of the truck, was not enough and the said fact must have been proved by her by leading necessary evidence in that regard. The learned Counsel submitted that the claimant must have examined Respondent No.2 to prove the said fact as well as

to prove her income and mere filing of the income certificate issued by Respondent No.2 was not enough. The learned Counsel submitted that thus there was absolutely no evidence to saddle the liability on the insurance company. The learned Counsel, therefore, prayed for setting aside the impugned award and exonerating the insurance company from its liability to pay the amount of compensation to the claimant in the claim petition.

8) Shri Patil, learned Counsel appearing for Respondent No.1, i.e. original claimant, opposed the submissions made on behalf of the appellant – insurance company. The learned Counsel submitted that since beginning, it was a specific case of Respondent No.1 that she was employed by respondent No.2, as coolie and at the relevant time, she was travelling through the offending truck as coolie employed by Respondent No.2. The learned counsel further submitted that since the facts stated by respondent No.1 in her

petition that she was employed by respondent No.2 as coolie and the salary certificate in her name was issued by Respondent No.2 were not disputed or denied by said Respondent No.2, it was not necessary on her part to examine the said respondent to prove the admitted facts.

9. The learned Counsel further submitted that in the FIR, nowhere her name has been reflected as passenger travelling through the said offending truck. The learned Counsel further submitted that the claimant was honest enough in admitting that some passengers were being carried at the relevant time, through the said offending truck. The learned Counsel further submitted that she has produced all the necessary documents to prove that she had suffered the injuries and as a result of the said injury, had incurred the permanent disability to the extent of 35%. The learned Counsel submitted that the disability certificate produced on record by respondent No.1 was not seriously

disputed and in her cross-examination, except a bare a suggestion that it was a false certificate, no other suggestion was given to the claimant so as to disprove her contention.

10. The learned Counsel further submitted that the petitioner has proved all the relevant facts, i.e. occurrence of the accident; ownership of the offending truck that the truck was insured with the appellant – insurance company; the claimant suffered the injuries in the said accident and that she incurred permanent disability in the said accident etc. In such circumstances, according to the learned Counsel, the Tribunal has rightly awarded the compensation of Rs.1,50,000/- and has rightly held the insurance company liable for payment of compensation.

11. The learned Counsel inviting my attention to the terms of policy submitted that the policy was very well covering the risk of six

coolies, who may be carried in the said truck and due premium towards that was paid by owner of the truck while purchasing the said policy. The learned Counsel further submitted that the aforesaid facts have not been disputed or denied by the insurance company. The learned Counsel submitted that in view of the fact that the risk of the coolies was covered by the insurance policy, the Tribunal has rightly held the insurance company jointly and severally liable for payment of the compensation to the claimant.

12. In so far as argument advanced by learned Counsel appearing for the insurance company in respect of TPPD claim, learned Counsel submitted that some mistake seems to have occurred by the Tribunal in interpreting the said term. The learned counsel was fair enough in submitting that the discussion made and the conclusion recorded in that regard by the Tribunal, on the face of it, cannot be supported. The learned Counsel further submitted that

however having regard to the fact that the insurance policy was covering the risk of the coolies, ultimately the judgment cannot be faulted with. The learned Counsel, therefore, prayed for passing the appropriate orders.

13) I have carefully considered the submissions advanced by learned Counsel appearing for the parties. I would first deal with the objection raised by the insurance company as about the premium of Rs.75/- paid by owner of the truck, which, as has been observed by the Tribunal, covers unlimited risk. After having gone through the terms of the policy and after having known as for what reason the amount of Rs.75/- was paid by the owner, the conclusion so recorded by the Tribunal cannot be supported. Apparently, the Tribunal has misconstrued that the aforesaid amount was paid for covering unlimited risk.

14. It is quite clear from the terms that

the amount of Rs.75/- was paid by the owner of the truck by way of extra premium to cover unlimited risk for the damages, which may be caused to the property of the third party and it was not covering the risk of the passengers being unauthorisedly carried in goods truck.

15. In so far as the contention raised by the insurance company, that since the evidence on record clearly suggest that the passengers were being carried in goods truck, the owner shall be held guilty for violation of policy condition and, therefore, the insurance company needs to be exonerated, cannot be accepted. Though, it cannot be denied from the evidence on record that the passengers were being carried through the offending truck, the question is whether the claimant, who had filed the claim petition, was travelling in the said truck as passenger at the relevant time or as coolie, as has been claimed by her? From the evidence on record, I have no hesitation in recording a finding that the

claimant has sufficiently proved that, at the relevant time, she was travelling through the said offending truck as coolie employed by the owner of the said truck, i.e. Respondent No.2. Further, the risk of the claimant was duly covered by the terms of the insurance policy since the owner has paid premium to cover the risk of six coolies travelling through the said truck. As such, I do not see that the Insurance company could have been exonerated from its liability to pay the amount of compensation.

16) The other objection raised by the insurance company that it was incumbent on the part of the claimant to prove her income from salary, as has been stated by her and mere filing of the income certificate was not enough, also cannot be sustained since the contentions raised by the claimant in her claim petition in this regard were not denied or disputed by Respondent No.2 in his written statement.

. The objection in regard to the medical evidence also does not carry any much substance. The disability certificate is existing on record which has been issued by the Civil Surgeon and the same was not seriously disputed. In absence of any contrary evidence the Tribunal has relied upon the said certificate. It does not appear to me that the tribunal has committed any error in doing so.

17) After having considered the entire material on record it does not appear to me that any interference is warranted in the ultimate conclusion recorded by the Tribunal holding the insurance company jointly and severally liable to pay the amount of compensation to the claimant. In so far as the finding which was objected to by the insurance company, as about the interpretation made by the tribunal of the term 'T.P.P.D.', I have already recorded a finding that the same is incorrect and cannot be sustained. However, as has been elaborately discussed by me herein before it may not have any

impact on the liability of the insurance company to pay the compensation to the original claimant.

. In the result the following order.

ORDER

i) Appeal is dismissed without any order as to the costs.

ii) Pending Civil Application, if any, stands disposed of.

(P.R.BORA)
JUDGE

bdv/
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